

**REMARKS**

The Office Action mailed December 28, 2004, has been received and reviewed. Claims 1 through 41 are currently pending in the application. Claims 1 through 41 stand rejected. Applicants have canceled claim 20, amended claims 1-19, 21-26, 29-34, and 36-41, and respectfully request reconsideration of the application as amended herein.

Entry of the amendment to paragraph 1 of the Specification, which updates the Government Rights paragraph, is respectfully solicited.

**35 U.S.C. § 102(e) Anticipation Rejections**Anticipation Rejection Based on U.S. Patent No. 5,694,393 to Kaye

Claims 1 through 25, 29 through 31, and 36 through 38 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Kaye (U.S. Patent No. 5,694,393). Applicants respectfully traverse this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Regarding claim 1, claim 1 is amended to further clarify the invention. Specifically, the element of “employing an opportunistic data transfer between the first and second communication nodes across the dynamic connection while the dynamic connection is activated,” is moved from the preamble to a positively recited method element of the claim. Furthermore, the element of replicating data is expanded to include “replicating data at the first and second communication nodes by propagating a redundant copy of the data across the dynamic connection.”

The Office Action indicates that the elements of “using a first monitor at the first communication node and a second monitor at the second communication node,” is set forth by Kaye by stating, “using a first monitor (monitoring party/subscriber M, Col 9, lines 42-67) at the first node and a second monitor (monitored party/subscriber B, refer to Col 9, lines 42-67, each

nodes has monitoring functionalities).” However, Applicants submit that the monitoring functionalities set forth in Kaye are not the same monitoring functionalities recited in claim 1 and described in the specification of the present application.

The present application describes the monitoring function as, “[a]fter a dynamic LAN is created is step 82, **a continual monitor** is initiated in step 84 **to determine whether or not the communication nodes are still within communication range with each other**. As mentioned above, embodiments of the present invention do not require reliable networking connections to carry out network functions. An ODTP component creates network connections whenever possible and utilizes the connection for as long as the communication nodes are within communication range. The continual monitor determines whether the communication nodes are still within communication range. If at any instant the communication nodes are out of communication range, execution returns to start and the ODTP component waits for a re-connection or another connection to be established. Otherwise, execution continues as illustrated in Figure 3” (pg. 15, lines 7-16, emphasis added).

The Kaye reference, on the other hand, describes the monitoring function as; “[i]n some systems there may be a requirement to monitor **the activity of individual subscribers** and in order to do this an authorised subscriber . . . makes a request on any node to monitor any individual subscriber” (col. 9, lines 42-46, emphasis added). Furthermore, Kaye teaches that “[w]hen an individual subscriber is monitored, any individual calls set up by the individual subscriber as the calling party or received as the called party are also directed to the monitoring party” (col. 10, lines 32-35, emphasis added).

It appears apparent to Applicants that the Kaye monitor does not use “a first monitor at the first communication node and a second monitor at the second communication node **to determine when the first and second communication nodes are within communication range,**” as recited in amended claim 1. In effect, the Kaye monitor appears to monitor call activity of individual subscribers, not whether the first communication nodes (monitoring party in Kaye) and second communication node (monitored party in Kaye) are within communication range.

In addition, Applicants can find no reference to an opportunistic data transfer as recited in

claim 29 and described in the specification of the present application. The present application uses the acronym ODTP for opportunistic data transfer protocol and states that “[e]mbodiments in accordance with the present invention do not require reliable networking connections to carry out network functions. An ODTP component is opportunistic, establishing network connections whenever possible and utilizing the connection for as long as the connection exists. When the connection is lost, the ODTP component waits for a re-connection or another connection to be established and will simply resume from the point that it left off with the last connection” (pg. 4, lines 15-20). Applicants can find no reference in Kaye for providing for data integrity and opportunistic transfers based on whether communication connections exist. The only reference Applicants can find in Kaye to communication connection problems state that “[d]ata links in a distributed system are always vulnerable to failure. As a first level of protection, it should be possible to build in secondary routing, if not for the whole system, then at least for those parts considered critical” (col. 10, lines 59-62). Kaye further states that “[a]s a precaution against failures in node equipment which is critical to the operation of the system, either because many data routes depend on them or because they are the home node for a significant number of users, such node equipment should be duplicated, so that total node failure is highly unlikely” (col. 11, lines 7-12). In other words, it appears to applicant that Kaye only teaches redundant methods to maintain the connection, not redundant methods to transfer data when a connection is possible.

Therefore, a 35 U.S.C. § 102(e) is improper because each and every element as set forth in the claim is not found, either expressly or inherently described, in a single prior art reference. Namely, the elements of an “opportunistic data transfer” and “a first monitor and a second monitor, used to determine when the first and second communication nodes are within communication range” are not set forth in Kaye. As a result, Applicants respectfully request that the rejection of amended claim 1 be withdrawn.

Regarding claims 2-18, these claims depend from now allowable amended claim 1. Therefore, at least due to their dependency from claim 1, claims 2-18 are now allowable and Applicants respectfully request that the rejection of claims 2-18 be withdrawn.

Regarding claim 19, Applicants have amended claim 19 to add the element from claim 20

recited as “wherein at least one of the plurality of communication nodes is an intended archival system.” In rejecting claim 20, the Office Action states that “Kaye discloses at least one of the pluralities of communication nodes (N4, Fig 4) is an intended archival system (Control Node, which collects/storage responses, refer to Col 8, Lines 19-35). Applicants assert that the control node disclosed in Kaye is different from the intended archival system in claim 20.

Kaye discloses that “[i]n the case of coordinated set-up, the request is propagated around the coverage nodes in the same way as above, but the call is not immediately set-up. Instead, each node indicates individually to the control node CN (see below) when it has resources for the call. **The control node collects the responses** and decides on a predetermined criteria (for example complete coverage) when the call should commence, at which time it propagates a connect instruction to all the coverage nodes. **Thus synchronized call set-up is achieved, but at the cost of delayed initial call establishment**” (col. 8, lines 19-27, emphasis added). In other words, the control node collects data on a temporary basis, until the predetermined criteria is met. Applicants can find nothing in Kaye indicating that this collected data is to be archived.

On the other hand, the present application describes the intended archival system as “in one embodiment, the ODTP component gives users and/or communication nodes “read-only” access to the data. Only a master archival system manipulates and/or causes data to be deleted. Therefore, **data is only removed from the system when the master archival system receives and confirms that the data is secure at the master archival system** and issues a delete command to remove all copies of the secure data from the dynamically mobile data communication system” (pg. 13, lines 10-15, emphasis added). Furthermore, in describing one embodiment of the present invention, the specification states that “ by way of example, in an agricultural setting where communication nodes gather data regarding a particular harvest, an embodiment of the present invention includes **using opportunistic data transfer to archive a copy of the gathered data at an archival system**. Once a copy of be gathered data is archived, the archival system utilizes opportunistic data transfer to disseminate a delete command in order to delete all other copies of the archived data through the system” (pg. 18, lines 9-14, emphasis added). Thus, the intended archival location in the present invention is intended to archive data collected at the various communication nodes. This is much different than temporarily collecting

data until a predetermined criteria is met as disclosed in Kaye.

In addition, the analysis regarding opportunistic data transfer, set forth above with respect to claim 1, is equally applicable to claim 19. Therefore, a 35 U.S.C. § 102(e) is improper because each and every element as set forth in the claim is not found, either expressly or inherently described, in a single prior art reference. Namely, the elements of an “intended archival system” and an “opportunistic data transfer” are not set forth in Kaye. As a result, Applicants respectfully request that the rejection of amended claim 19 be withdrawn.

Regarding claims 20, claim 20 is canceled because the subject matter of claim 20 has been added to claim 19.

Regarding claims 21-25, these claims depend from now allowable amended claim 20. Therefore, at least due to their dependency from claim 20, claims 21-25 are now allowable and Applicants respectfully request that the rejection of claims 21-25 be withdrawn.

Regarding claim 29, claim 29 is amended to further clarify the invention. Specifically, the element of “performing an opportunistic data transfer” is moved from the preamble to a positively recited element of the claimed computer program product.

As a result, the analysis regarding opportunistic data transfer, set forth above with respect to claim 1, is equally applicable to claim 29. Therefore, a 35 U.S.C. § 102(e) is improper because each and every element as set forth in the claim is not found, either expressly or inherently described, in a single prior art reference. Namely, the element of an “opportunistic data transfer” is not set forth in Kaye. As a result, Applicants respectfully request that the rejection of amended claim 29 be withdrawn.

Regarding claims 30 and 31, these claims depend from now allowable amended claim 29. Therefore, at least due to their dependency from claim 29, claims 30 and 31 are now allowable and Applicants respectfully request that the rejection of claims 30 and 31 be withdrawn.

Regarding claim 36, claim 36 is amended to further clarify the invention. Specifically, the element of “performing an opportunistic data transfer” is moved from the preamble to a positively recited method element of the claim.

As a result, the analysis regarding opportunistic data transfer, set forth above with respect to claim 1, is equally applicable to claim 36. Therefore, a 35 U.S.C. § 102(e) rejection is improper because each and every element as set forth in the claim is not found, either expressly or inherently described, in a single prior art reference. Namely, the element of an “opportunistic data transfer” is not set forth in Kaye. As a result, Applicants respectfully request that the rejection of amended claim 36 be withdrawn.

Regarding claims 37 and 38, these claims depend from now allowable amended claim 36. Therefore, at least due to their dependency from claim 36, claims 37 and 38 are now allowable and Applicants respectfully request that the rejection of claims 37 and 38 be withdrawn.

### **35 U.S.C. § 103(a) Obviousness Rejections**

Obviousness Rejection Based on U.S. Patent No. 5,694,393 to Kaye in view of U.S. Patent No. 6,141,686 to Jackowski et al.

Claims 26 through 28, 32 through 35, and 39 through 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaye (U.S. Patent No. 5,694,393) in view of Jackowski et al. (U.S. Patent No. 6,141,686). Applicants respectfully traverse this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

Regarding claims 26-28, these claims depend from now allowable amended claim 19. Therefore, at least due to their dependency from claim 19, claims 26-28 are now allowable and Applicants respectfully request that the rejection of claims 26-28 be withdrawn.

Regarding claims 32-35, these claims depend from now allowable amended claim 29. Therefore, at least due to their dependency from claim 29, claims 32-35 are now allowable and Applicants respectfully request that the rejection of claims 32-35 be withdrawn.

Regarding claims 39-41, these claims depend from now allowable amended claim 36. Therefore, at least due to their dependency from claim 36, claims 39-41 are now allowable and Applicants respectfully request that the rejection of claims 39-41 be withdrawn.

**ENTRY OF AMENDMENTS**

The amendments to claims 1-19, 21-26, 29-34, and 36-41 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application. Further, the amendments do not raise new issues or require a further search.

**CONCLUSION**

Claims 1-19 and 21-41 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,



Stephen R. Christian  
Registration No. 32,687  
Attorney for Applicants  
P.O. Box 1625  
Idaho Falls, ID 83415-3899  
Phone: (208) 526-9140  
Fax: (208) 526-8339

Date: 24 MAR 2005